

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 19, 2013

**Elisabeth A. Shumaker
Clerk of Court**

LAURA RIDGELL-BOLTZ,

Plaintiff – Appellant (formerly
appellee and cross-appellant),

v.

CAROLYN W. COLVIN, Commissioner,
United States Social Security
Administration,

Defendant – Appellee (formerly
appellant and cross-appellee).

Nos. 12-1477 and 12-1495
(D.C. No. 1:10-CV-00252-RPM)

ORDER

Before **KELLY** and **GORSUCH**, Circuit Judges.

The defendant Commissioner of the U.S. Social Security Administration initiated an appeal (Case No. 12-1477) and the plaintiff below, Laura Ridgell-Boltz, initiated a cross-appeal (Case No. 12-1495).

Before the first brief was filed, the Commissioner filed an opposed “Motion for Voluntary Dismissal of Appeal Pursuant to Rule 42(b).” Ms. Ridgell-Boltz filed a “Response to Motion for Voluntary Dismissal of Appeal Pursuant to Rule 42(b)” and the Commissioner then filed “Government’s Reply in Support of Motion for Voluntary Dismissal and Opposition to Motion For Attorneys’ Fees.”

In sum, the Commissioner wants to voluntarily dismiss the lead appeal but the parties cannot agree as to how costs are to be allocated. See Fed. R. App. P. 42(b). Ms. Ridgell-Boltz's opposition to the dismissal is generally based on her contention that the Commissioner's appeal was not based on solid legal footing and should have never been brought in the first instance. As a result of the unnecessary appeal, argues Ms. Ridgell-Boltz, she incurred attorneys' fees in the amount of \$2,600 and should be reimbursed for those fees by the Commissioner.

Federal Rule of Appellate Procedure 42(b) states that a party may file a motion to voluntarily dismiss its appeal "on terms agreed to by the parties or fixed by the court." Here, the parties cannot agree to terms so the dismissal must be on terms fixed by the court.

Ms. Ridgell-Boltz cites no contract, statute, or case precedent entitling her to an award of attorneys' fees. The court therefore infers that the request is based on the court's inherent authority or under Fed. R. App. P. 28.

Federal courts possess the inherent authority to assess attorneys' fees for the willful disobedience of a court order or when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 258-59 (1975) (internal citations omitted). A party may also seek damages in the form of attorneys' fees pursuant to Fed. R. App. P. 38 if an appeal is frivolous.

The Commissioner has cited cases from other circuits in which the courts declined to read into Fed. R. App. P. 42(b) the power to award attorneys' fees. The Commissioner has also cited cases for the proposition that it would be a violation of the government's

sovereign immunity to require it to pay attorneys' fees. The Commissioner further notes that the request for fees is not supported by documentation attesting to the number of hours spent or the hourly rate. We need not and do not address these arguments.

Rather, we simply find that there is nothing in Ms. Ridgell-Boltz's request for attorneys' fees nor in the procedural facts of the appeal that would support a finding of frivolousness, bad faith, or of vexatious, wanton or oppressive behavior such that an award of attorneys' fees would be warranted.

Accordingly, the Commissioner's motion to voluntarily dismiss the government's appeal is granted and the plaintiff's request for attorneys' fees in connection with the motion to dismiss is denied.

Case No. 12-1477 is dismissed pursuant to Fed. R. App. P. 42(b), both sides to bear their own costs. The mandate in that appeal shall issue with this order. The cross-appeal by Ms. Ridgell-Boltz in Case No. 12-1495 will continue in the ordinary course as a stand-alone appeal. Any prior directives related to a cross-appeal schedule are vacated.

The opening brief and appendix in Case No. 12-1495 shall be served and filed on or before July 29, 2013.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in dark ink, appearing to read 'Douglas E. Cressler', written over a horizontal line.

by: Douglas E. Cressler
Chief Deputy Clerk